

The most recent changes to PERB Regulations, approved by the Board on February 9, 2006, take effect on May 11, 2006. The changes will be reflected on the PERB web site as of that date.

The substantive changes are summarized as follows:

Repeal of Regulations: The regulations no longer provide separate processes for filing financial statement complaints (section 32125), public notice complaints (sections 32900 through 32950) or petitions for Board review under MMBA (sections 60000 through 60070). Such issues, instead, may be raised through the filing of unfair practice charges.

In addition to the sections noted above, section 32646 (Defenses to Complaint) was repealed.

New Regulation: Section 32613 provides for on-line filing of unfair practice charges.

Amendments: In addition to conforming or necessary changes in sections 32190, 32602 and 32615 related to the repeal of regulations described above, the following are the more significant areas addressed:

1. Window period. Changes to sections 32130(b), 33020, 40130, 51026, 61010, 71026, 81010 and 91010 conform our treatment of window period filings to provisions of Government Code sections 6707 and 6800 by allowing filing on the next business day when the final day of the window period would otherwise fall on a Saturday, Sunday or state holiday.
2. Filing/service. Changes are made in sections 32130(c), 32135 and 32140.
3. MMBA statute of limitations. Six month rule now referenced by section 32620.
4. Unit modification petitions. Changes require proof of majority support when a petition to add positions would increase the unit size by 10 percent or more. In addition, proof of at least 30 percent support is required if the petition to add involves positions also at issue in a pending representation petition case. Sections 32781, 61450, 81450 and 91450 are affected by these changes.
5. Application of MMBA representation regulations. Section 61000 is amended to provide for application of PERB regulations only where the employer has not adopted local rules.

The text of all new and amended sections is shown below, with strikeout and bold font used to denote deleted text and new text, respectively. The only sections in the rulemaking package that are not included are those that are repealed or that were only amended with respect to authority and/or reference citations.

ATTACHMENT

32130. Computation of Time.

(a) In computing any period of time under these regulations, except under Section 32776(c), (d), (e) and (f), the period of time begins to run the day after the act or occurrence referred to.

(b) ~~Except for filings required during a "window period" as defined in Section 33020, 40130, 51026, 61010, 71026, 81010 or 91010, whenever~~ **Whenever** the last date to file a document falls on Saturday, Sunday, or a holiday, as defined in Government Code Sections 6700 and 6701, or PERB offices are closed, the time period for filing shall be extended to and include the next regular PERB business day. The extension of time provided herein shall be applied subsequent to the application of any other extension of time provided by these regulations or by other applicable law.

(c) A five day extension of time shall apply to any filing made in response to documents served by mail if the place of address is within the State of California, ten days if the place of address is outside the State of California but within the United States, and twenty days if the place of address is outside the United States. **No extension of time applies in the case of documents served in person, or by facsimile transmission as defined in Section 32090.**

32135. Filing.

(a) All documents shall be considered "filed" when the originals, and the required number of copies, if any, are actually received by the appropriate PERB office **during a regular PERB business day** ~~before the close of business on the last date set for filing.~~

(b) All documents, except proof of support as described in sections 32700, 61020, 81020 and 91020, shall also be considered "filed" when received **during a regular PERB business day** by facsimile transmission at the appropriate PERB office ~~before the close of business on the last day for filing~~ together with a Facsimile Transmission Cover Sheet, **or when received by on-line filing as defined in Section 32613.**

(c) A party filing documents by facsimile transmission **or by on-line filing** must also place the original, together with the required proof of service and the required number of copies, in the U.S. mail for delivery to the appropriate PERB office. ~~As an alternative to the service requirements set forth in Section 32140, any document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding.~~

(d) A facsimile filing shall be accompanied by a Facsimile Transmission Cover Sheet which includes the following:

(1) The name of the party serving or filing papers by fax and the name and telephone number of the agent transmitting the document by facsimile transmission;

(2) The name or title of the document being transmitted and the number of pages;

(3) The date and time of the transmission;

(4) The PERB case number, if any.

32140. Service.

(a) All documents referred to in these regulations requiring "service," ~~or required to be accompanied by "proof of service,"~~ except subpoenas, shall be considered "served" by the Board or a party when personally delivered, ~~or deposited in the first-class mail~~ **or with a delivery service properly addressed, or when sent by facsimile transmission in accordance with the requirements of Sections 32090 and 32135(d).** All documents required to be served shall include a "proof of service" ~~affidavit or~~ declaration signed under penalty of perjury ~~which meets the requirements of Section 1013(a) of the Code of Civil Procedure or~~ which contains the following information: **(1) The name of the declarant; (2) the county and state in which the declarant is employed or resides; (3) a statement that the declarant is over the age of 18 years and not a party to the case; (4) the address of the declarant; (5) a description of the documents served; (6) the method of service and a statement that any postage or other costs were prepaid; (7) the name(s), address(es) and, if applicable, fax number(s) used for service on the party(ies); and (8) the date of service.**

____ I declare that I am employed or reside in the County of _____, State of _____.
I am over the age of 18 years and not a party to the within entitled cause; my address is
_____. On _____, I served the _____ on the _____ by placing
a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the
U.S. Mail at _____ addressed as follows:

____ (Names of Parties Served)

____ I declare under penalty of perjury that the foregoing is true and correct, and that this
declaration was executed on _____ at _____.

(Type or print name) _____ (Signature)

(b) Whenever "service" is required by these regulations, service shall be on all parties to the proceeding and shall be concurrent with the filing in question.

32155. Disqualification of Board Agent or Board Members.

(a) No Board member, and no Board agent performing an adjudicatory function, shall decide or otherwise participate in any case or proceeding:

(1) In which he or she has a financial interest in the outcome.

(2) When he or she is related to any party or to an agent or officer of any party, or to an attorney or counsel of any party by consanguinity or affinity within the third degree computed according to the rules of law, or when he or she is indebted, through money borrowed as a loan, to any party or to an attorney or counsel of any party.

(3) When, in the case or proceeding, he or she has been attorney or counsel for any party; or when he or she has given advice to any party upon any matter involved in the proceeding before the Board; or when he or she has been retained or employed as attorney or counsel for any party within one year prior to the commencement of the case at the Board level.

(4) When it is made to appear probable that, by reason of prejudice of such Board member or Board agent, a fair and impartial consideration of the case cannot be had before him or her.

(b) Whenever such a Board agent shall have knowledge of any facts, which under the provisions of this rule disqualify him or her from presiding over any aspect of a hearing or investigation, it shall be his or her duty immediately to notify the General Counsel or the Chief Administrative Law Judge, as appropriate, setting forth all reasons for his or her belief.

(c) Any party may request the Board agent to disqualify himself or herself whenever it appears that it is probable that a fair and impartial hearing or investigation cannot be held by the Board agent to whom the matter is assigned. Such request shall be written, or if oral, reduced to writing within 24 hours of the request. The request shall be under oath and shall specifically set forth all facts supporting it. The request must be made prior to the taking of any evidence in an evidentiary hearing or the actual commencement of any other proceeding.

If such Board agent admits his or her disqualification, such admission shall be immediately communicated to the General Counsel or the Chief Administrative Law Judge, as appropriate, who shall designate another Board agent to hear the matter.

Notwithstanding his or her disqualification, a Board agent who is disqualified may request another Board agent who has been agreed upon by all parties to conduct the hearing or investigation.

(d) If the Board agent does not disqualify himself or herself and withdraw from the proceeding, he or she shall so rule on the record, state the grounds for the ruling, and proceed with the hearing or investigation and the issuance of the decision. The party requesting the disqualification may, within ten days, file with the Board itself a request for special permission to appeal the ruling of the Board agent. If permission is not granted, the party requesting disqualification may file an appeal, after hearing or investigation and issuance of the decision, setting forth the grounds of the alleged disqualification along with any other exceptions to the decision on its merits.

(e) Whenever a Board member shall have knowledge of any facts which, under the provisions of this rule, disqualify him or her to consider any case before the Board, it shall be his or her duty to declare the disqualification to the Board immediately upon learning of such facts. This declaration shall be made part of the official record of the Board. The Board member shall

then refrain from participating and shall attempt in no way to influence any other person with respect to the matter.

(f) Any party to a case before the Board may file directly with the Board member a motion for his or her recusal from the case when exceptions are filed with the Board or within ten days of discovering a disqualifying interest provided that such facts were not available at the time exceptions were filed. The motion shall be supported by sworn affidavits stating the facts constituting the ground for disqualification of the Board member. Copies of the motion and supporting affidavits shall be served on all parties to the case.

(g) Within ten days after the filing of a motion for recusal, the Board member alleged to be disqualified shall render a decision stating the reasons therefore. If the Board member is not on the panel assigned to hear the case, he or she shall so inform the parties and indicate that he or she does not intend to participate in the case. In the event that the Board member decides to participate, he or she shall render a decision on the motion for recusal before doing so.

(h) Any party aggrieved by a determination made pursuant to subsections (d) or (g) of this rule may include the matter of claimed disqualification in a writ of extraordinary relief filed pursuant to Government Code Section **3509.5**, 3520, 3542, 3564, 71639.4 or 71825.1 or Public Utilities Code section 99562 seeking judicial review of the Board's decision on the merits.

32190. Motions.

(a) Written motions made before, during or after a hearing shall be filed with the Board agent assigned to the proceeding. Service and proof of service pursuant to Section 32140 are required.

(b) ~~Except as provided in Section 32646, responses~~ **Responses** to motions shall be filed with the Board agent within fourteen days of service of the motion, or within such time as is directed by the Board agent. Service and proof of service pursuant to Section 32140 are required.

(c) During the hearing, a motion or the response thereto may be made orally on the record.

(d) The Board may hear oral argument or take evidence on any motion.

(e) No hearing shall be delayed because a motion is filed unless the Board so directs.

(f) Rulings on motions shall not be appealable except as specified in Sections 32200 and ~~32646~~ **32360**.

32350. Definition of Administrative Decision.

(a) An administrative decision is any determination made by a Board agent other than:

- (1) a refusal to issue a complaint in an unfair practice case pursuant to Section 32630,
- (2) a dismissal of an unfair practice charge, **or**
- (3) ~~a determination of a public notice complaint, or~~
- ~~(4)~~ a decision which results from the conduct of a formal hearing or from an investigation which results in the submission of a stipulated record and a proposed decision written pursuant to Section 32215.

(b) An administrative decision shall contain a statement of the issues, fact, law and rationale used in reaching the determination.

32450. Request.

(a) An original and six (6) copies of a request from a party that the Board seek injunctive relief shall be filed with the General Counsel at the headquarters office with a copy to the appropriate regional office as designated in sections 32075 and 32612 and shall include:

- (1) The written request, accompanied by reasons stating why injunctive relief is appropriate;
- (2) A copy of the charge or complaint; and
- (3) Declarations, on personal knowledge, setting forth in detail all pertinent facts underlying the request for injunctive relief.

(b) Service and proof of service on the respondent, is required of all documents filed with the General Counsel. Under this section service and proof of service shall be conducted pursuant to section 32140 except that service by mail must be done by express mail or by another common carrier promising overnight delivery thereof. If the request is made during a work stoppage or lockout, personal service on the respondent of all documents filed with the General Counsel is required.

(c) Notice that such a request is being made shall be provided no less than 24 hours prior to the filing to the General Counsel and the party against whom the relief is sought. Such notice may be by telephone or in person, or by any other means reasonably calculated to provide notice.

(d) An affidavit of notice shall be filed with the request. Such affidavit shall indicate to whom, at what time, and in what manner the notice required by subparagraph (c) above was accomplished.

32500. Review of Representation Case.

(a) Any party to a decision in a representation case by the Board itself, except for decisions rendered pursuant to Chapter 5, ~~Subchapter 1~~, Chapter 7 or Chapter 8 of these Regulations,

may file a request to seek judicial review within 20 days following the date of service of the decision. An original and five copies of the request shall be filed with the Board itself in the headquarters office and shall include statements setting forth those factors upon which the party asserts that the case is one of special importance. Service and proof of service of the request pursuant to Section 32140 are required.

(b) Any party shall have 10 days following the date of service of the request to file a response. An original and five copies of the response shall be filed with the Board itself in the headquarters office. Service and proof of service of the request pursuant to Section 32140 are required.

(c) The Board may join in a request for judicial review or may decline to join, at its discretion.

32602. Processing Violations.

(a) Alleged violations of the EERA, Ralph C. Dills Act, HEERA, MMBA, TEERA, Article 3 of the Trial Court Act, the Court Interpreter Act, and alleged violations of local rules adopted pursuant to the MMBA, Trial Court Act or Court Interpreter Act, shall be processed as unfair practice charges ~~except as otherwise provided in these regulations.~~

(b) **Except as provided in subsections (c), (d) and (e),** Such unfair practice charges may be filed by an employee, employee organization, or employer against an employee organization or employer.

(c) **A charge alleging that an employer or an exclusive representative has failed to comply with Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569, may be filed by any affected member of the public.**

(d) **A charge alleging that an exclusive representative has failed to comply with Government Code section 3515.7(e), 3546.5, 3584(b), or 3587, or Public Utilities Code Section 99566.3 may only be filed by an affected employee.**

(e) **A charge alleging that an exclusive representative has failed to comply with Government Code Section 3502.5(f), 71632.5(f), or 71814(f) may only be filed by the employer or an affected employee.**

32613. On-Line Filing.

(a) **"On-line filing" and "electronic filing" refer to utilization of the web-based electronic filing service provided by the Board as an alternative means to file an unfair practice charge pursuant to this Subchapter.**

(b) **Utilization of on-line filing requires access by the user to the following:**

(1) Personal computer with a Windows or Mac operating system;

- (2) Internet web browser;**
 - (3) Internet connection; and**
 - (4) Digital copies of any attachments that are to be submitted with the charge.**
- (c) Utilization of on-line filing will require the user to provide an e-mail address, establish a user password, and agree to the terms of the following Disclaimer Statement found on the PERB website:**

This application uses Javascript which will not work with some Ad Blocking Software. We suggest that you either turn off your Ad Blocking Software, or add our site URL (www.perb.ca.gov) to the trusted sites on your Ad Blocking Software. PERB is not responsible for difficulties encountered between your internet provider and PERB's network. An unfair practice charge (UPC) is considered "filed" when actually received before the close of business (5 p.m.) on a regular PERB business day. (PERB Regulation 32135.) The date and time a UPC is deemed filed will be determined by the date/time stamp applied by our server which points to Santa Cruz, CA: Scrutz-net, inc. 165.227.1.1: ns.scrutz.net Service area: Western U.S. If, after submitting your UPC, you do not receive an e-mail response containing a confirmation your charge has been successfully filed within a few minutes, there was a problem with your submission and your claim will not be considered filed. Using the PERB on-line filing application does not relieve the user of the responsibility for filing the signed original plus one copy of the charge along with the original signed proof of service in the appropriate PERB office (PERB Regulations 32605 and 32615). A copy of the completed unfair practice charge and proof of service form must also be served on the party being charged (respondent) by someone other than the charging party. A proof of service form must be attached to each copy of the charge to prove that a copy of the charge has been served on the respondent. If you have uploaded your attachments at the time of electronically filing your UPC, you DO NOT need to submit copies of the same attachments through the U.S. Mail to PERB. However, a copy of the charge and all attachments must be served on the responding party. Failure to provide the original signed UPC, signed Proof of Service and attachments (if necessary) to the appropriate PERB office within 5 business days from the date stamp provided by PERB's server in your confirmation e-

mail will result in the UPC being dismissed except in cases where good cause is demonstrated.

(d) Upon successful submission of an unfair practice charge, including any attachments, and the proof of service, through utilization of on-line filing, PERB will provide confirmation of receipt via e-mail to the e-mail address provided by the user.

32615. Contents of Charge.

(a) A charge may be filed alleging that an unfair practice or practices have been committed. The charge shall be in writing, signed under penalty of perjury by the party or its agent with the declaration that the charge is true, and complete to the best of the charging party's knowledge and belief, and contain the following information:

(1) The name and address of the party alleged to have engaged in an unfair practice. If the party is the State of California, the name and address of the "appointing power" as defined in Government Code Section 18524, and of the Governor shall be set forth;

(2) The name, address, and telephone number of the charging party;

(3) The name, address, and telephone number of an authorized agent of the charging party to be contacted;

(4) The sections of the Government Code and/or, under MMBA, Article 3 of the Trial Court Act, or the Court Interpreter Act, the applicable local rules, or the sections of the Public Utilities Code, alleged to have been violated;

(5) A clear and concise statement of the facts and conduct alleged to constitute an unfair practice;

(6) A statement whether or not an agreement or memorandum of understanding exists between the parties, and the date and duration of such agreement or memorandum of understanding;

(7) A statement of the extent to which and the inclusive dates during which the parties have invoked any grievance machinery provided by an agreement, **or, where applicable, have invoked procedures provided by the employer for resolving public notice complaints;**

(8) A statement of the remedy sought by the charging party;

(b) A charge filed under MMBA, Article 3 of the Trial Court Act, or the Court Interpreter Act alleging a violation of local rules must also contain a copy of the applicable rule(s).

(c) Service and proof of service on the respondent pursuant to Section 32140 are required.

32620. Processing of Case.

(a) When a charge is filed, it shall be assigned to a Board agent for processing.

(b) The powers and duties of such Board agent shall be to:

(1) Assist the charging party to state in proper form the information required by section 32615;

- (2) Answer procedural questions of each party regarding the processing of the case;
 - (3) Facilitate communication and the exchange of information between the parties;
 - (4) Make inquiries and review the charge and any accompanying materials to determine whether an unfair practice has been, or is being, committed, and determine whether the charge is subject to deferral to arbitration, or to dismissal for lack of timeliness.
 - (5) Dismiss the charge or any part thereof as provided in Section 32630 if it is determined that the charge or the evidence is insufficient to establish a prima facie case; or if it is determined that a complaint may not be issued in light of Government Code Sections 3514.5, 3541.5, 3563.2, 71639.1(c) or 71825(c), **or Public Utilities Code Section 99561.2; or if it is determined that a charge filed pursuant to Government Code section 3509(b) is based upon conduct occurring more than six months prior to the filing of the charge.**
 - (6) Place the charge in abeyance if the dispute arises under MMBA, HEERA, TEERA, Trial Court Act or Court Interpreter Act and is subject to final and binding arbitration pursuant to a collective bargaining agreement, and dismiss the charge at the conclusion of the arbitration process unless the charging party demonstrates that the settlement or arbitration award is repugnant to the purposes of MMBA, HEERA, TEERA, Trial Court Act or Court Interpreter Act, as provided in section 32661.
 - (7) Issue a complaint pursuant to Section 32640.
- (c) The respondent shall be apprised of the allegations, and may state its position on the charge during the course of the inquiries. Any written response must be signed under penalty of perjury by the party or its agent with the declaration that the response is true and complete to the best of the respondent's knowledge and belief. Service and proof of service pursuant to Section 32140 are required.
 - (d) Facts obtained from oral responses that reveal potential deficiencies in the allegations must be communicated to the charging party before dismissal of a charge under Section 32630. The Board agent shall advise the charging party in writing of the deficiencies in the charge in a warning letter, unless otherwise agreed by the Board agent and the charging party. The warning letter shall identify the facts obtained from any response which reveal a deficiency in the charge. Responses which are obtained after the warning letter and which support dismissal of the charge must be communicated to the charging party before the dismissal is issued under Section 32630. The dismissal must identify the deficiencies in the charging party's allegations.

32781. Petition.

Absent agreement of the parties to modify a unit, an exclusive representative, an employer, or both must file a petition for unit modification in accordance with this section. Parties who wish to obtain Board approval of a unit modification may file a petition in accordance with the provisions of this section.

(a) A recognized or certified employee organization may file with the regional office a petition for modification of its units:

- (1) To add to the unit unrepresented classifications or positions;
- (2) To divide an existing unit into two or more appropriate units;
- (3) To consolidate two or more established units into one appropriate unit.

(b) A recognized or certified employee organization, an employer, or both jointly may file with the regional office a petition for unit modification:

- (1) To delete classifications or positions which by virtue of change in circumstances are no longer appropriate to the established unit because said classification(s) or position(s) are management, supervisory, confidential, not covered by TEERA, EERA, HEERA or Ralph C. Dills Act, or otherwise prohibited by statute from inclusion in the unit;
- (2) To make technical changes to clarify or update the unit description.
- (3) To resolve a dispute as to unit placement or designation of a new classification or position.
- (4) To delete classification(s) or position(s) not subject to (1) above which are not appropriate to the unit because said classification(s) or position(s) are management, supervisory, confidential, not covered by TEERA, EERA, HEERA or Ralph C. Dills Act, or otherwise prohibited by statute from inclusion in the unit, provided that:

(A) The petition is filed jointly by the employer and the recognized or certified employee organization, or

(B) There is not in effect a lawful written agreement or memorandum of understanding, or

(C) The petition is filed during the "window period" of a lawful written agreement or memorandum of understanding as defined in these regulations in Section 33020 for EERA, Section 40130 for Ralph C. Dills Act, Section 51026 for HEERA, or Section 71026 for TEERA.

(c) All affected recognized or certified employee organizations may jointly file with the regional office a petition to transfer classifications or positions from one represented established unit to another.

(d) The petition shall be ~~filed in writing on forms provided by the Board.~~ It shall be signed by an authorized agent of each petitioning party **and shall include the following information:**

(1) The name, address and telephone number of the exclusive representative(s) of the unit(s) affected by the petition;

(2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;

(3) A brief description and the title(s) of the established unit(s);

(4) The approximate number of employees in the established unit;

(5) The approximate number of employees covered by the petition;

(6) The effective and expiration dates of the current written agreement or memorandum of understanding, if any, covering employees in the established unit;

(7) A description of the modification(s) sought by the petition;

(8) The name and address of any other employee organization known to have an interest in representing employees covered by the petition;

(9) A statement of the reasons for the modification(s).

(e)(1) If the petition requests the addition of classifications or positions to an established unit, and the proposed addition would increase the size of the established unit by ten percent or more, the Board ~~may~~ shall require proof of majority support of persons employed in the classifications or positions to be added.

(2) If the petition requests the addition of classifications or positions to an established unit and the classifications or positions are also included in a proposed appropriate unit in a pending request for recognition or petition for certification, the Board shall require proof of at least thirty percent support of persons employed in the classifications or positions to be added.

(3) Proof of support is defined in Section 32700 of these regulations.

(f) A copy of a petition filed solely by an exclusive representative or an employer shall be concurrently served on the other party, and on any additional interested party. Proof of service pursuant to Section 32140 is required. Proof of majority support, if required, shall be filed only with the regional office.

33020. Window Period.

"Window period" means the 29-day period established pursuant to Government Code Sections 3544.1(c) and 3544.7(b)(1) which is less than 120 days, but more than 90 days, prior to the expiration date of a lawful written agreement negotiated by the public school employer and the exclusive representative. The written agreement expiration date means the last effective date of the agreement. Notwithstanding the provisions of Section 32130, the date on which the written agreement expires shall not be counted for the purpose of computing the window period. ~~Whenever the last day of the window period falls on a Saturday, Sunday, or holiday, as~~

~~defined in Government Code Sections 6700 and 6701, and state offices are closed, any petition required to be filed during a window period must be filed on or before the last PERB business day during the window period.~~

40130. Window Period.

"Window period" means the 29-day period which is less than 242 days, but more than 212 days prior to the expiration date of a memorandum of understanding between the employer and the exclusive representative. The memorandum of understanding expiration date means the last effective date of the memorandum of understanding. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period. ~~Whenever the last day of the window period falls on a Saturday, Sunday, or holiday as defined in Government Code Sections 6700 and 6701, and state offices are closed, any petition required to be filed during a window period must be filed on or before the last PERB business day during the window period.~~

51026. Window Period.

"Window period" means the 31-day period established pursuant to Government Code Sections 3574(c) and 3577(b)(1), which is not more than 120 days and not less than 90 days prior to the expiration date of a memorandum of understanding negotiated by the higher education employer and the exclusive representative. The memorandum of understanding expiration date means the last effective date of the memorandum. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period. ~~Whenever the last day of the window period falls on a Saturday, Sunday, or holiday, as defined in Government Code Sections 6700 and 6701, and state offices are closed, any petition required to be filed during a window period must be filed on or before the last PERB business day during the window period.~~

61000. Application of Regulations.

Except as otherwise ordered pursuant to Chapter 1, or as provided for by Public Utilities Code, Division 10, Part 16, Chapter 5 (section 105140 et seq.), the Board will conduct representation proceedings and/or agency fee rescission elections under MMBA in accordance with the applicable provisions of this ~~Subchapter~~ **Chapter** only where a public agency has not adopted local rules in accordance with MMBA section 3507, ~~a local agency has adopted such provisions as its local rules or where all parties to a representation case agree to be bound by the applicable PERB Regulations.~~

61010. Window Period.

"Window period" means the 29-day period which is less than 120 days but more than 90 days prior to the expiration date of a lawful memorandum of understanding negotiated by the public agency and the exclusive representative. Expiration date means the last effective date of the memorandum. Notwithstanding the provisions of Section 32130, the date on which the

memorandum of understanding expires shall not be counted for the purpose of computing the window period. ~~Whenever the last day of the window period falls on a Saturday, Sunday, or holiday, as defined in Government Code Sections 6700 and 6701, and state offices are closed, any petition required to be filed during a window period must be filed on or before the last PERB business day during the window period.~~

61080. Conduct of Elections; Eligibility to Appear on Ballot.

(a) If the Board determines that a Board-conducted election is necessary, the election shall be conducted in accordance with Article 2 of this ~~Subchapter~~ **Chapter**.

(b) Any employee organization which filed a valid petition or which became a party to a representation case may appear on the election ballot, provided that the organization has evidenced to the satisfaction of the Board at least 30 percent support in the appropriate unit. If an election is directed by a PERB decision, each eligible employee organization shall have 15 workdays from the date of service of the decision in which to demonstrate at least 30 percent support in the unit found to be appropriate by the Board.

(c) The Board shall determine the sufficiency of the proof of support in accordance with the provisions of Section 61020 of these Regulations.

61105. Ballot.

(a) All elections shall be conducted by secret ballot under the supervision of the Board.

(b) Ballots shall be prepared under the supervision of the Board. The order of voting choices and the wording of each ballot entry shall be determined by the Board absent an approved agreement of the parties.

(c) Except in the case of a runoff election, in which the ballot entries are determined pursuant to Section 61145, or an election conducted pursuant to either Article 4 or 7 of this ~~Subchapter~~ **Chapter**, the ballot entry of "No Representation" shall appear on each ballot in a representation election.

(d) At any time prior to issuance of the notice of election (pursuant to Section 61110), an employee organization may file a request with the regional office to have its name removed from the ballot. The request shall disclaim any interest in representing the employees in the described unit. Service and proof of service of the request pursuant to Section 32140 are required.

61185. Certification of Results of Election or Certification of Exclusive Representative.

Except in the case of elections conducted pursuant to either Article 4 or 7 of this ~~Subchapter~~ **Chapter**, the Board shall certify the results of the election or issue a certification of an exclusive representative if the results of the election are conclusive and no timely objections are filed.

61400. Severance Petition.

(a) An employee organization may file a petition to become the exclusive representative of an appropriate unit consisting of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative by filing a petition for certification in accordance with the provisions of Article 3 of this ~~Subchapter~~ **Chapter**. Such a petition shall include the following information:

(1) The name, address and telephone number of the petitioning employee organization and the name, address and telephone number of the agent to be contacted;

(2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;

(3) A brief description and the title of the established unit;

(4) The name, address and telephone number of the exclusive representative of the established unit and the name, address and telephone number of the agent to be contacted;

(5) A description of the proposed appropriate unit, including the classifications and positions to be included and those to be excluded;

(6) The approximate number of employees in the proposed appropriate unit;

(7) The date on which the exclusive representative was recognized or certified;

(8) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the established unit.

(b) Whenever a memorandum of understanding exists, a severance petition or an amendment to a severance petition must be filed during the "window period" defined by Section 61010.

(c) Concurrent with the filing of a severance petition and any amendment to a severance petition, the employee organization shall serve a copy of the petition or amendment, excluding any proof of support, on the employer and the exclusive representative. Proof of service pursuant to Section 32140 is required.

61450. Petition.

Absent agreement of the parties to modify a unit, an exclusive representative, an employer, or both must file a petition for unit modification in accordance with this section. Parties who wish to obtain Board certification of a unit modification may file a petition in accordance with the provisions of this section.

(a) An exclusive representative may file with the regional office a petition for modification of its unit(s):

- (1) To add to the unit unrepresented classifications or positions;
 - (2) To divide the existing unit into two or more appropriate units;
 - (3) To consolidate two or more of its established units into one appropriate unit.
- (b) An exclusive representative, an employer, or both jointly may file with the regional office a petition for unit modification:

- (1) To delete classifications or positions which by virtue of change in circumstances are no longer appropriate to the established unit because said classification(s) or position(s) are not covered by MMBA or otherwise prohibited by statute or local rule from inclusion in the unit;
- (2) To make technical changes to clarify or update the unit description;
- (3) To resolve a dispute as to unit placement or designation of a new classification or position;
- (4) To delete classifications or positions not subject to (1) above which are no longer appropriate to the established unit because said classification(s) or position(s) are not covered by MMBA or otherwise prohibited by statute or local rule from inclusion in the unit, provided that:

- (A) The petition is filed jointly by the employer and the exclusive representative, or
- (B) There is not in effect a lawful written agreement or memorandum of understanding, or
- (C) The petition is filed during the "window period" of a lawful memorandum of understanding as defined in these regulations in Section 61010.

(c) All affected exclusive representatives may jointly file with the regional office a petition to transfer classifications or positions from one represented established unit to another.

(d) The petition shall be signed by an authorized agent of each petitioning party and include the following information:

- (1) The name, address and telephone number of the exclusive representative(s) of the unit(s) affected by the petition;
- (2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;
- (3) A brief description and the title(s) of the established unit(s);
- (4) The approximate number of employees in the established unit;

- (5) The approximate number of employees covered by the petition;
 - (6) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the established unit;
 - (7) A description of the modification(s) sought by the petition;
 - (8) The name and address of any other employee organization known to have an interest in representing employees covered by the petition;
 - (9) A statement of the reasons for the modification(s).
- (e)(1) If the petition requests the addition of classifications or positions to an established unit, **and the proposed addition would increase the size of the established unit by ten percent or more**, the Board ~~may~~ **shall** require proof of majority support of persons employed in the classifications or positions to be added.
- (2) If the petition requests the addition of classifications or positions to an established unit and the classifications or positions are also included in a proposed appropriate unit in a pending request for recognition or petition for certification, the Board shall require proof of at least thirty percent support of persons employed in the classifications or positions to be added.**
- (3) Proof of support is defined in Section 61020 of these regulations.**
- (f) A copy of a petition filed solely by an exclusive representative or an employer shall be concurrently served on the other party, and on any additional interested party. Proof of service pursuant to Section 32140 is required. Proof of majority support, if required, shall be filed only with the regional office.

61480. Disposition of Petitions.

- (a) Upon receipt of a petition for unit modification, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary in order to decide the questions raised by the petition and to ensure full compliance with the provisions of the law.
- (b) The Board shall dismiss a petition if it is found to be improperly or not timely filed, or if proof of support submitted falls short of the required majority support, or if a representation election result has been certified within the 12 months immediately preceding the date of filing of the petition which covers any employees proposed to be added to the unit, or, ~~(3)~~ whenever the employer has, within the previous 12 months, lawfully recognized the exclusive representative in the described unit or a subdivision thereof.
- (c) Board Order of Unit Modification.

(1) The Board shall issue an order of unit modification whenever the disposition of a petition filed under this Article results in the modification of a unit.

(2) The order shall not be considered to be a new certification for the purpose of computing time limits pursuant to Section 61200.

61620. Employee Vote.

(a) Provided the rescission petition is timely and properly filed pursuant to this Article 2, and the proof submitted in support of the petition is determined to be adequate pursuant to Section 61600, a rescission election among the employees in the established unit shall be conducted under procedures established by the Board and in accordance with election procedures described in these regulations.

(b) The agency shop agreement or provision shall be rescinded if a majority of the employees in the negotiating unit covered by the provision vote to rescind the agreement.

71026. Window Period.

"Window period" means the 31-day period established pursuant to Public Utilities Code Sections 99564.1(c) and 99564.4(b)(1), which is not more than 120 days and not less than 90 days prior to the expiration date of a memorandum of understanding negotiated by the transit district employer and the exclusive representative. The memorandum of understanding expiration date means the last effective date of the memorandum. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period. ~~Whenever the last day of the window period falls on a Saturday, Sunday, or holiday, as defined in Government Code Sections 6700 and 6701, and state offices are closed, any petition required to be filed during a window period must be filed on or before the last PERB business day during the window period.~~

81010. Window Period.

"Window period" means the 29-day period which is less than 120 days but more than 90 days prior to the expiration date of a lawful memorandum of understanding negotiated by the public agency and the exclusive representative. Expiration date means the last effective date of the memorandum. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period. ~~Whenever the last day of the window period falls on a Saturday, Sunday, or holiday, as defined in Government Code Sections 6700 and 6701, and state offices are closed, any petition required to be filed during a window period must be filed on or before the last PERB business day during the window period.~~

81450. Petition.

Absent agreement of the parties to modify a unit, an exclusive representative, an employer, or both must file a petition for unit modification in accordance with this section. Parties who wish to obtain Board certification of a unit modification may file a petition in accordance with the provisions of this section.

(a) An exclusive representative may file with the regional office a petition for modification of its unit(s):

- (1) To add to the unit unrepresented classifications or positions;
- (2) To divide the existing unit into two or more appropriate units;
- (3) To consolidate two or more of its established units into one appropriate unit.

(b) An exclusive representative, an employer, or both jointly may file with the regional office a petition for unit modification:

- (1) To delete classifications or positions which by virtue of change in circumstances are no longer appropriate to the established unit because said classification(s) or position(s) are not covered by the Trial Court Act or otherwise prohibited by statute or local rule from inclusion in the unit;
- (2) To make technical changes to clarify or update the unit description;
- (3) To resolve a dispute as to unit placement or designation of a new classification or position;
- (4) To delete classifications or positions not subject to (1) above which are no longer appropriate to the established unit because said classification(s) or position(s) are not covered by the Trial Court Act or otherwise prohibited by statute or local rule from inclusion in the unit, provided that:

(A) The petition is filed jointly by the employer and the exclusive representative, or

(B) There is not in effect a lawful written agreement or memorandum of understanding, or

(C) The petition is filed during the "window period" of a lawful memorandum of understanding as defined in these regulations in Section 81010.

(c) All affected exclusive representatives may jointly file with the regional office a petition to transfer classifications or positions from one represented established unit to another.

(d) The petition shall be signed by an authorized agent of each petitioning party and include the following information:

- (1) The name, address and telephone number of the exclusive representative(s) of the unit(s) affected by the petition;

- (2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;
 - (3) A brief description and the title(s) of the established unit(s);
 - (4) The approximate number of employees in the established unit;
 - (5) The approximate number of employees covered by the petition;
 - (6) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the established unit;
 - (7) A description of the modification(s) sought by the petition;
 - (8) The name and address of any other employee organization known to have an interest in representing employees covered by the petition;
 - (9) A statement of the reasons for the modification(s).
- (e)(1) If the petition requests the addition of classifications or positions to an established unit, **and the proposed addition would increase the size of the established unit by ten percent or more**, the Board ~~may~~ **shall** require proof of majority support of persons employed in the classifications or positions to be added.
- (2) If the petition requests the addition of classifications or positions to an established unit and the classifications or positions are also included in a proposed appropriate unit in a pending request for recognition or petition for certification, the Board shall require proof of at least thirty percent support of persons employed in the classifications or positions to be added.**
- (3) Proof of support is defined in Section 81020 of these regulations.**
- (f) A copy of a petition filed solely by an exclusive representative or an employer shall be concurrently served on the other party, and on any additional interested party. Proof of service pursuant to Section 32140 is required. Proof of majority support, if required, shall be filed only with the regional office.

91010. Window Period.

"Window period" means the 29-day period which is less than 120 days but more than 90 days prior to the expiration date of a lawful memorandum of understanding negotiated by the public agency and the exclusive representative. Expiration date means the last effective date of the memorandum. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period. ~~Whenever the last day of the window period falls on a Saturday, Sunday, or~~

holiday, as defined in Government Code Sections 6700 and 6701, and state offices are closed, any petition required to be filed during a window period must be filed on or before the last PERB business day during the window period.

91450. Petition.

Absent agreement of the parties to modify a unit, an exclusive representative, an employer, or both must file a petition for unit modification in accordance with this section. Parties who wish to obtain Board certification of a unit modification may file a petition in accordance with the provisions of this section.

(a) An exclusive representative may file with the regional office a petition for modification of its unit(s):

- (1) To add to the unit unrepresented classifications or positions;
- (2) To divide the existing unit into two or more appropriate units;
- (3) To consolidate two or more of its established units into one appropriate unit.

(b) An exclusive representative, an employer, or both jointly may file with the regional office a petition for unit modification:

- (1) To delete classifications or positions which by virtue of change in circumstances are no longer appropriate to the established unit because said classification(s) or position(s) are not covered by the Court Interpreter Act or otherwise prohibited by statute or local rule from inclusion in the unit;
- (2) To make technical changes to clarify or update the unit description;
- (3) To resolve a dispute as to unit placement or designation of a new classification or position;
- (4) To delete classifications or positions not subject to (1) above which are no longer appropriate to the established unit because said classification(s) or position(s) are not covered by the Court Interpreter Act or otherwise prohibited by statute or local rule from inclusion in the unit, provided that:
 - (A) The petition is filed jointly by the employer and the exclusive representative, or
 - (B) There is not in effect a lawful written agreement or memorandum of understanding, or
 - (C) The petition is filed during the "window period" of a lawful memorandum of understanding as defined in these regulations in Section 91010.

(c) All affected exclusive representatives may jointly file with the regional office a petition to transfer classifications or positions from one represented established unit to another.

(d) The petition shall be signed by an authorized agent of each petitioning party and include the following information:

(1) The name, address and telephone number of the exclusive representative(s) of the unit(s) affected by the petition;

(2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;

(3) A brief description and the title(s) of the established unit(s);

(4) The approximate number of employees in the established unit;

(5) The approximate number of employees covered by the petition;

(6) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the established unit;

(7) A description of the modification(s) sought by the petition;

(8) The name and address of any other employee organization known to have an interest in representing employees covered by the petition;

(9) A statement of the reasons for the modification(s).

(e)(1) If the petition requests the addition of classifications or positions to an established unit, **and the proposed addition would increase the size of the established unit by ten percent or more**, the Board ~~may~~ **shall** require proof of majority support of persons employed in the classifications or positions to be added.

(2) If the petition requests the addition of classifications or positions to an established unit and the classifications or positions are also included in a proposed appropriate unit in a pending request for recognition or petition for certification, the Board shall require proof of at least thirty percent support of persons employed in the classifications or positions to be added.

(3) Proof of support is defined in Section 91020 of these regulations.

(f) A copy of a petition filed solely by an exclusive representative or an employer shall be concurrently served on the other party, and on any additional interested party. Proof of service pursuant to Section 32140 is required. Proof of majority support, if required, shall be filed only with the regional office.